

# THE BOND BUYER

## SEC's Wenatchee, Wash., Case Foreshadows Financial Penalties

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WASHINGTON — The Securities and Exchange Commission's enforcement action against participants in the Greater Wenatchee, Wash., Regional Events Center Public Facilities District's arena deal shows that the commission will not shy from seeking financial penalties against municipal issuers and transaction participants, market participants said. It also underscores the potential pitfalls if the parties are determined to get a financing done despite some red flags or concerns, they said.

The SEC's settled administrative proceedings, announced Nov. 5, revolve around \$41.77 million of bond anticipation notes the district issued in 2008 to finance the construction of an events center and ice hockey arena. The BANs defaulted in 2011 but the default was later cured and the BANs were refunded with refunding bonds secured by sales tax revenues. The district agreed to pay \$20,000 — the first financial penalty the SEC has assessed against a municipal issuer, while underwriter Piper Jaffray & Co. and its lead investment banker on the deal, Jane Towery, agreed to be censured and pay penalties of \$300,000 and \$25,000, respectively to settle charges. Towery also agreed to a one-year ban on many business activities.

John Grugan, a securities lawyer with Ballard Spahr LLC in Philadelphia, said the case fits with the SEC's recent enforcement actions and serves as another indicator that the commission will not spare the rod when it finds negligence in municipal financings.

The case bears some similarity to the SEC's action against West Clark Community Schools, which is based in Clark County, Ind., he said. In both cases, the SEC sanctioned the issuer for faulty disclosure and the underwriter for failing to perform proper due diligence. The SEC's Rule 15c2-12 on disclosure requires underwriters to obtain official statements before bidding on, or purchasing, munis and says they must be able to form a reasonable basis for belief that those documents are complete and accurate.

"Now [the SEC] is showing it will seek financial penalties against issuers if there is a source to pay those fines other than taxpayer dollars," Grugan said. "All of this is very consistent with what the enforcement division has been saying."

SEC officials said they felt justified in imposing a financial penalty against the Greater Wenatchee district because the money would come from users of the arena, who tacitly benefited from omissions of fact in the offering statement for the BANs. The OS wrongly stated there had been no independent reviews of the financial projections for the center, when an independent

consultant had actually examined the projections twice and questioned the economic viability of the project. The OS also failed to disclose that the financial projections were revised upward based on optimistic assurances by civic leaders that the community would support the project, and left out key information about Wenatchee's remaining debt capacity of \$19.3 million, which would limit its ability to support any future long-term bonds.

Attorneys at a number of prominent firms said they were unable to comment because they were involved either in representing the deal participants in the SEC action or in helping to develop policies, procedures, and remedial actions stemming from the case.

Other market participants suggested that the case highlights a not uncommon problem, in which underwriters are reluctant to insist changes be made to offering documents for fear they will be booted from deals.

"It has to do with business relationships between elected officials and underwriters," said one issuer official who preferred not to be identified. Bankers think that if their firm does not do the deal, the issuer will find someone else who will, the official added.

Another market participant said deals sometimes fall apart if an underwriter insists on being thorough, because issuers have fired firms that refused to sign off on faulty offering documents.

Ben Watkins, Florida's bond finance director, said the case is an example of the SEC using enforcement as a heavy-handed way to get issuers in line. Watkins said he doubts problems like those the SEC found in Wenatchee are pervasive in the muni industry, and that issuers could use education before being hit with financial penalties.

"They've got a carrot and a stick, and they're using the stick," Watkins said.